STEWART TURNER, Pro Se

Address: 200 East 71st St., Apt. 5A

New York, NY 10021

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

In re:	
	Chapter 11
FLETCHER INTERNATIONAL, LTD.	
	Case No. 12-12796 (REG)
Debtor.	

APPELLANT STEWART TURNER'S STATEMENT OF ISSUES ON APPEAL

AND DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Pursuant to Federal Rule of Bankruptcy Procedure 8006, the Appellant Stewart Turner ("Appellant" or "Stewart Turner") respectfully submits this Statement of Issues on Appeal and Designation of Items to be Included in the Record on Appeal. Appellant timely filed his Notice of Appeal

(Docket No. 494) of the March 20, 2014 Order Approving Settlement Agreement Between Fletcher International, Ltd., and United Community Banks, Inc. (Docket No. 465).

I. Issues Presented

(1) Whether the Bankruptcy Court was given correct and complete information by the Trustee's Counsel to make a fully informed decision based on facts presented or comments presented as fact in determining that the Trustee's settlement of a dispute over the estate's largest asset (an asset that accounts for the vast majority of the estate's value), at 12% of the intrinsic value upon exercise of that warrant (specifically for $12 million when the asset had an intrinsic value of $100 million) falls above the lowest level on the range of reasonableness (TMT Trailer Ferry, as mentioned by Judge Gerber in Exhibit A at page 17 of the March 19, 2014 transcript), and thereby gave approval to that settlement under Bankruptcy Rule 9019 without the correct facts in evidence?

(2) Whether such a severe discount off of the as-converted value of the asset can be justified by "litigation risk," as was argued by the Trustee, where binding precedent from the New York Court of Appeals holds that this specific asset – a warrant to buy shares of stock following a 1:5 reverse stock split – should be transacted at intrinsic value.

(3) Whether under the circumstances, the Trustee's disposition of this asset at 12% of intrinsic value was a transfer lacking reasonably equivalent value.

II. Designation of Record

Appellant Stewart Turner designates the following items for inclusion in the appellate record. Unless otherwise noted, all references are to docket entry numbers of electronically filed documents in this Chapter 11 case.

Designation No.	Date of Filing	ECF No.	Description

1.	3/5/2014	437	Chapter 11 Trustee's ex parte application to shorten the notice period for the hearing of the Trustee's motion for entry of an order pursuant to Bankruptcy Rule 9019(A) approving the settlement agreement between the Debtor and United Community Banks, Inc.
2.	3/5/2014	438	Order granting the Chapter 11 Trustee's ex parte application to shorten the notice period for the hearing of the Trustee's motion for entry of an order pursuant to Bankruptcy Rule 9019(A) approving the settlement agreement between the Debtor and United Community Banks, Inc.
3.	3/5/2014	439	Trustee's Motion for entry of an order pursuant to Bankruptcy Rule 9019(A) approving the settlement agreement between Fletcher International, Ltd. and United Community Banks, Inc.
4.	3/5/2014	440	Declaration of Richard J. Davis in support of the Trustee's motion for entry of an order pursuant to Bankruptcy Rule 9019(A) approving the settlement agreement between Fletcher International Ltd. and United Community Banks, Inc.
5.	3/5/2014	441	Notice of Hearing for Trustee's motion for entry of an order pursuant to Bankruptcy Rule 9019(A) approving the settlement agreement between Fletcher International, Ltd. and United Community Banks, Inc.
6.	3/6/2014	443	Certificate of Service filed by Stephan Hornung on behalf of the Trustee.
7.	3/12/2014	452	Objection of Stewart Turner to Trustee's Motion to Trustee's Order for Entry of an Order Pursuant to Bankruptcy Rule 9019(a) approving the settlement agreement between Fletcher International, Ltd. and United Community Banks, Inc.

8.	3/13/2014	453	Affidavit of Service filed by Stewart Turner.
9.	3/17/2014	456	Chapter 11 Trustee's response to the objection of Stewart Turner to the Trustee's motion for entry of an order pursuant to Bankruptcy Rule 9019(A) approving the settlement agreement between Fletcher International, Ltd. and United Community Banks, Inc..
10.	3/18/2014	459	Notice of Agenda for March 19, 2014 Hearing filed by Michael Luskin
11.	3/19/2014	Docket Number Unavailable	Hearing Transcript – attached as Exhibit A
12.	3/20/2014	465	Order Pursuant to Bankruptcy Rule 9019(A) approving the settlement agreement between Fletcher International, Ltd. and United Community Banks, Inc.
13.	4/2/2014	494	Notice of Appeal filed by Stewart Turner

Dated April 16, 2014.

Stewart Turner

STEWART TURNER

Exhibit A

In Re:

FLETCHER INTERNATIONAL, LTD.

Case No. 12-12796-reg; Adv. Pro. No. 13-01814-reg

March 19, 2014

---

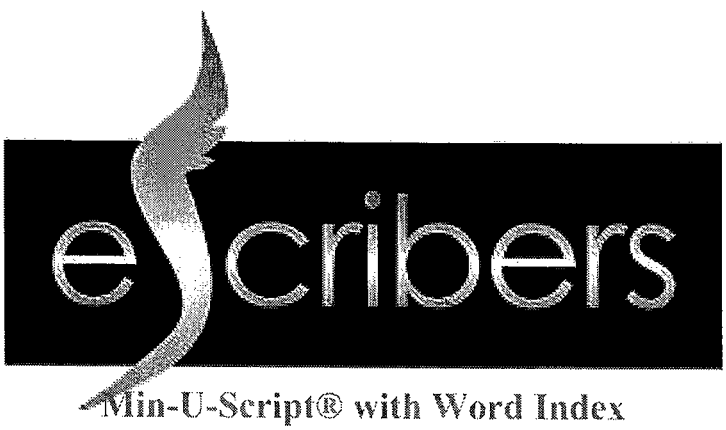
eScribers, LLC

(973) 406-2250

operations@escribers.net

www.escribers.net

To purchase copies of this transcript, please contact us.



Min-U-Script® with Word Index

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12796-reg; Adv. Pro. No. 13-01814-reg

- -x

In the Matter of:

FLETCHER INTERNATIONAL, LTD.,

Debtor.

- -x

RICHARD J. DAVIS,

Plaintiff,

- against -

FLETCHER INTERNATIONAL, INC.

Defendant.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 19, 2014

9:57 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

Adversary proceeding: 13-01814-reg Davis v. Fletcher International, Inc.

1) Pre-Trial Conference

2) Trustee's First Omnibus Claims Objection (Proofs of Claim Filed by Certain Pension Funds)

3) Trustee's Second Omnibus Claims Objection (Proofs of Claim Filed by FAM-Affiliated Indirect Investors) Soundview Objection Adjourned to 4/30/14 at 9:45 a.m.

4) Trustee's Objection to Proof of Claim No. 23 Filed by Kell B. Benson

5) Trustee's Objection to Proof of Claim No. 69 Filed by William Cleveland

6) Discovery Conference RE: Motion of Fletcher Asset Management Inc. for an Order Enjoining the trustee from Producing Documents to Ostad PLLC (Counsel to the BVI Funds) in Violation of Uniform Protective Order Governing trustee Discovery

7) Motion Filed by the trustee for an Order Approving the

Settlement Agreement Between Fletcher International, Ltd. and United Community Banks, Inc.

8) Hearing to Consider (i) the Stipulation and Order Temporarily Allowing the Claim of Gregory Messer, Chapter 7 trustee, for Plan Voting purposes and (ii) the Stipulation and Order Resolving the Proof of claim, Filed by Jeffrey M. Colon

9) Trustee's Objection to Proof of Claim No. 26 Filed by Jeffrey M. Colon

10) Doc# 459 Notice of Agenda for March 19, 2014 Hearing

Transcribed by: Linda Ferrara
eScribers, LLC
700 West 192nd Street, Suite #607
New York, NY 10040
(973)406-2250
operations@escribers.net

A P P E A R A N C E S :

LUSKIN, STERN & EISLER LLP

Attorneys for Chapter 11 Trustee

Eleven Times Square

New York, NY 10036

BY: STEPHAN E. HORNUNG, ESQ.

MICHAEL LUSKIN, ESQ.

RICHARD J. DAVIS, ATTORNEY AT LAW

Chapter 11 Trustee

451 Madison Avenue

11th Floor

New York, NY 10017

BY: RICHARD J. DAVIS, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE
Office of the United States Trustee
201 Varick Street
Suite 1006
New York, NY 10014

BY: RICHARD C. MORRISSEY, ESQ.

JONES DAY
Attorney for Soundview Elite, et al.
221 East 41st Street
New York, N Y 10017
STEPHEN PEARSON, ESQ.

ALSO PRESENT:
ALPHONSE FLETCHER, Fletcher Asset Management (Telephonically)
GEORGE LADNER, Fletcher Asset Management (Telephonically)
KAREN OSTAD, ESQ., Ostad PLLC, Attorney for Deborah Midanek (Telephonically)
STEWART TURNER, Pro Se

P R O C E E D I N G S

THE COURT: Let me get appearances from everybody and then I have some preliminary comments.

MR. LUSKIN: Okay. Your Honor, Michael Luskin and Stephan Hornung from Luskin, Stern & Eisler for Richard Davis, the Chapter 11 trustee and Mr. Davis is in the front row.

MR. TURNER: Stewart Turner.

THE COURT: Okay. Anybody else expect to be heard on this matter? What about on the phone? Are you on, Mr. Fletcher?

MR. FLETCHER: Yes. Yes, I am, Your Honor.

THE COURT: All right. Before you begin, Mr. Luskin --

MR. LADNER: Your Honor, so is George Ladner.

THE COURT: All right. Gentlemen, ladies, at 8:50 a.m. this morning -- that's less than an hour before this hearing was supposed to start -- my chambers got a letter from Mr. Fletcher in both the FILB -- relating to both the FILB and Soundview cases of some length, seemingly, at least, served on all parties, although I don't know if anybody would have had the ability to read it in the time before this hearing commenced.

Mr. Fletcher says, amongst many other things, that he requests that I address the issues he raises in his letter as a threshold matter in advance of other actions in these

proceedings. That request is going to be and is denied. You don't communicate with the Court fifty minutes before a hearing is supposed to start, raising a threshold issue when people who might have a different view of the world haven't had a chance to respond. And indeed, haven't had a fair opportunity to even read the motion that is said to justify consideration as a threshold matter in advance of other proceedings. That is, indeed, assuming that the letter should be deemed to be a motion, a matter as to which I now take no position.

We're going to proceed with these matters. Mr. Fletcher, you're going to need to submit to me a motion asking for the relief that you're looking for. You can incorporate your letter if you wish. You get a hearing date from my courtroom deputy. You provide your opponents or expected opponents with an opportunity to respond and if you wish to reply, you provide for enough time for you to file your reply and for me to read your reply papers.

But deeming this letter to be a request for either an adjournment or a consideration of the issues in this letter as a threshold matter, that request is denied.

Now, Mr. Luskin, you have your motion for approval of your warrants matter.

MR. LUSKIN: Yes. We have a number of matters, Your Honor. We did serve an agenda. There are, I think eight different matters or nine different matters on and what I would

propose to do, with, of course, Your Honor's consent, would be to deal with a preliminary discovery matter. It's another of Mr. Fletcher's motions. I don't think that will take more than a few minutes. And then the UCBI settlement matter; what you've just referred to as the warrant matter.

The balance of the matters deal with objections -- omnibus objections to proofs of claim, some stipulations resolving two of those claims and a status conference in the FII adversary which Mr. Hornung would handle. Those collectively, I don't think would take more than fifteen minutes. I don't know how long the UCBI settlement hearing will take; probably more like forty-five minutes and I think the discovery motion that I would like to start with, because there's actually some time urgency on that one, would take I hope not more than five minutes.

THE COURT: All right. Let's proceed in accordance with your recommendation.

MR. LUSKIN: Okay. Briefly, Your Honor, Mr. Fletcher made a motion to enjoin the trustee from producing documents to Karen Ostad, who represents Deborah Midanek as fiduciary for some of the BVI Funds.

THE COURT: Was it Mr. Fletcher or Mr. Fletcher's company that --

MR. LUSKIN: Well --

THE COURT: -- was the subject of that request because

if it's the --

MR. LUSKIN: Of course, that's --

THE COURT: -- latter, that raises the issue we seem to be dealing with over and over again, that an individual can't represent a corporation in the U.S. courts --

MR. LUSKIN: Yes.

THE COURT: -- other than through counsel.

MR. LUSKIN: Yes, that is issue number one, is that it is a FAM, F-A-M, motion. Mr. Fletcher was advised months ago that FAM can only appear through counsel, not pro se. He has ignored or flouted that order as he has many other orders including an order that was entered only a couple of weeks ago about this very discovery motion. You'll recall we have a protocol. We have a governing protective order that sets out time deadlines that requires the trustee to give notice that it's been served with a subpoena and intends to produce documents. That notice was reduced to two days with Mr. Fletcher's consent on the phone.

We gave the required notice. Mr. Fletcher missed the deadline and did not object until last Friday, which was too late. We pointed out it was too late. Nevertheless, in an abundance of caution, we did not want to go ahead on our own and just produce the documents without going through this procedure.

We had negotiated a response to the subpoenas. We

stand ready to produce documents today. These are documents that Ms. Midanek and Ms. Ostad would like to see in order to prepare for the confirmation hearing next week. There's an objection deadline this week, and there have been and will continue to be ongoing meetings among the parties to try to resolve outstanding issues.

So it is important from our point of view that this be resolved right away. I know it's hard to stand before you and say that a discovery motion is urgent, but actually under the circumstances, it's just not right for Mr. Fletcher to be in the way of ongoing, important proceedings.

I would point out that the merits of the objection, such as they are, demonstrate a complete lack of basis in good faith in bringing it. The documents in issue are identical to the documents that we've already produced to the SEC and to the Soundview trustee. In particular, they're looking for some documents regarding redemptions that have been made. To the extent we have those documents, we're making those available or we would. We have to others and we would to the BVI Funds.

Mr. Fletcher has pointed to not a single document that would implicate proprietary trade secrets or privilege or any other of the concerns that might merit protection. These redemption documents are certainly not secret in any way.

As I've mentioned, the delay has already prejudiced the trustee and the BVI Funds. The Court's aware of the time

pressure. Our view, before we got this morning's letter, and I can't say I've read it all because it's hard to read on an iPhone, we think that this motion for a protective order merits sanctions under Bankruptcy Rule 7037(a)(5)(B). Certainly Mr. Fletcher should be given notice and an opportunity to be heard about sanctions.

But this has cost us time. It's cost us money. It's prejudicing ongoing negotiations. It's completely without merit. And as the letter this morning demonstrates, we're very close to having the kind of out-of-control pro se that the Second Circuit periodically has to step in and issue injunctions against. I know last week Your Honor admonished Mr. Fletcher for communicating ex parte, and it seems now that we're sort of damned if we do, damned if we don't -- I wish he had communicated ex parte with this morning's letter, so we wouldn't have to deal with it but, of course, he did communicate with the world. And we're now going to have to spend many thousands of dollars, practically I think everyone in the courtroom was an addressee of that letter, dozens of people are now going to have to spend time, the U.S. trustee's office is now going to have to spend time with issues that have already been dealt with at the very outset of both cases, Soundview and FILB. And at some point, as I've said before, enough is enough.

But back to the discovery motion, Your Honor, whether

or not Mr. Fletcher deserves to be sanctioned for bringing it, what we ask is that you deny his motion on the record, so we can begin to produce documents which, as I say, we're prepared to do now.

THE COURT: Does anybody want to be heard before I give Mr. Fletcher a chance to respond?

No response.

All right. Mr. Fletcher?

MR. FLETCHER: Thank you, Your Honor. First --

THE COURT: Mr. Fletcher, I don't know whether it's because you're soft-spoken or because you're in California, but I need you to speak a little louder, please.

MR. FLETCHER: Okay. Let's see. First, with regard to the suggestion that I gave consent to a two-day notice period for discovery demands from people like Ms. Midanek, I don't believe that's correct. That may be what Mr. Luskin wanted or perhaps even received but the conversation that I recall was regarding accelerating the discovery requests for the new Soundview trustee. It didn't occur to me that someone in the position of Ms. Midanek who has done what she's done, would suddenly get some accelerated access to our documents.

Secondly, with regard to his comment about my motion not being in good faith, I would simply say that given the misunderstandings that have occurred with regard to what the agreements are with the protocol and the data that Mr. Luskin

has seized, it clearly is not a situation where he could reasonably say it's not in good faith. He has documents that he should not have and they certainly should not be handed to people who have an adverse interest against the estate and complicated interests with us without those documents being carefully reviewed.

And then finally, I don't know what is or isn't permitted. As you know, I'm not an attorney. But Mr. Luskin makes a series of comments that I can't imagine are proper in terms of the protocol of the Court, and I would just respectfully ask that he please stop. I am a little familiar with the concept of an out-of-control pro se participant and I've strived to be very understated and careful in my participation since he took steps to limit our ability to be represented by counsel, and I would just simply appreciate it if he would spare us all the insults. That's all I have, Your Honor.

THE COURT: Well, I have one thing for you. Mr. Luskin has risen to reply and I'm going to give him that opportunity in a moment. Do you want to address how a corporation can appear in the U.S. Federal Courts pro se, without counsel?

MR. FLETCHER: I -- as you know, I'm certainly not in a position to give a -- an expert opinion on that. I believe you, Your Honor, directed me as agent for FAM to make some

responses, and I recall reading something in the Bankruptcy Code about a right to -- a right for a corporation to have a representative appear, but I'm certainly not prepared to provide a -- a legal argument on all of that. I guess it's Rule 910, perhaps, that talks about representation and appearances.

THE COURT: All right.

Mr. Luskin?

MR. LUSKIN: Your Honor, I just want to point you to item 432 on the docket in this case which is the order modifying the uniform protective order that reduced the notice. We were here at a hearing. Mr. Fletcher was on the phone. There really could be no misunderstanding about what was happening.

The next day the order was entered. It was served on Mr. Fletcher. When we provided notice to him with respect to the current document production, we included a copy of this order.

THE COURT: All right. Ladies and gentlemen, deeming Mr. Fletcher's motion for an injunction against production as both the discovery dispute it is and the motion to block production, the motion is denied. And I'm authorizing the trustee to produce the documents in question, there would be no occasion for me to also direct the trustee to do so, since the trustee is otherwise willing to do so.

The following are the bases for the exercise of my discretion in this regard. First, I note not because I'm going to make it a showstopper this time, because life is too short to do that, but for people to comply going forward. If you ask for an injunction, Rule 7001 of the Federal Rules of Bankruptcy Procedure requires an adversary proceeding and if the movant is a corporation, the corporation must appear by counsel. Neither of those have been complied with and thus, there is an inappropriate basis for even reaching the merits of it. But as I said, life is too short. We have to move on here.

An insufficient showing has been made that what the trustee proposes to do is in any way violative of the order which was entered and which is the best evidence of its content. The principle concern that Mr. Fletcher articulates, vis-a-vis documents that have already been produced to the SEC and to the Soundview trustee, is that it's to Ms. Midanek who is alleged to have acted and perhaps to be continuing to act adversely to either Mr. Fletcher or the Soundview estate or perhaps the FILB estate or some combination of those things. That, without more is an insufficient basis for denying discovery or prohibiting discovery.

Discovery is by its nature to people who have adverse interests to somebody; otherwise the discovery wouldn't be sought. Discovery is a mechanism we impose in the U.S. Federal Courts to make litigation a fair fight and to give people an

equal access to information. While all of that is fundamental to the majority of the people in this court who happen to be lawyers, I state the obvious so that you, Mr. Fletcher, will understand the conceptual underpinnings of a request for discovery and the legal bases upon which we grant discovery in the U.S. Federal Courts.

Mr. Luskin, we're spending enough time on lawyering in this case already. I'm going to so order the record and authorize your client to make the distribution and you, as his agent, to do so. If you want to confirm that by a written order, you have my permission but you can make production of the documents as soon as you walk out of the courtroom today.

MR. LUSKIN: Okay. Thank you, Your Honor and we will do that. I see no need to burden the Court with a separate written order.

Next, I would like to take up the UCBI settlement, Your Honor.

THE COURT: All right. Now I have preliminary comments on that. So have a seat for a minute, Mr. Luskin. I have one but only one objection to this settlement. It's from Mr. Turner.

Mr. Turner, like Mr. Fletcher, you're not an attorney, but nevertheless, you're appearing in a U.S. Federal Court and you have to comply with the rules that apply to attorneys and nonattorneys alike.

One of the several points that the trustee made was a reference to Rule 702 of the Federal Rules of Evidence which deals with expert opinion. Also related is Rule 701 of the Federal Rules of Evidence that deals with lay opinion.

In several places -- and by several, that's the understatement of the decade -- throughout your objection you express your opinions as an expert on the warrants of the character that are in issue as to why I should disapprove the settlement. And by way of example without necessarily telling you that I've caught them all, I'm talking about paragraphs 10, 12, 15, 16, 18, 22, 23, 24, 27, 28(a) and 28(b), 29, 31, 32, 33, 35 of your objection.

I know you're not a lawyer but you have to explain to me how I can take expert opinion evidence as to your view of the economic value of the warrants without compliance with Rule 26 and the other requirements associated with expert testimony and why, given the Second Circuit's decisions of Bank of China and my decision in Perry Koplik, I can take your points as anything other than argument and with respect to the relatively modest number of matters where you state facts rather than opinions.

I also need you to address, Mr. Turner, the at least seeming, if not plain, failure to address litigation risk or the factors relevant to the approval of settlements under the Supreme Court's decision in a case called TMT Trailer Ferry.

I'm going to flip-flop the normal order. I want to hear from Mr. Turner first. You can then respond, Mr. Luskin. Mr. Turner, I'm then going to give you a chance to reply and I'm going to give Mr. Luskin a chance to surreply. But in each case, the second round is to be limited to any remarks that were made in the first round. Come on up to the main lectern please, Mr. Turner.

MR. TURNER: Thank you, Your Honor. For the record, I'm Stewart Turner, appearing pro se and a member of Class 5, according to the trustee's proposed plan.

I believe I'm an expert because I wrote my senior thesis on stock options in 1980 while I was at Princeton. I explored options further while receiving my MBA from the Wharton School at the University of Pennsylvania in 1984 and have worked trading -- almost thirty years now trading options and looking to acquire, value, sell warrants which are just long-term options in various PEG (ph.) transactions.

So I think I have several years of academic experience and thirty years of work experience. And I think I'm very qualified to discuss warrants with you and certainly more so than any attorney in the court.

But it's not just my opinion, Your Honor. Over the years, Fletcher has used Quantal as the outside valuation analyst, as well as Buddy Fletcher doing some calculations, occasionally me and sometimes over the years, other people.

But it's not just Buddy Fletcher and Quantal; Quantal's work and Fletcher's work was reviewed by Citco, the largest hedge fund administrator, two accounting firms that are familiar with hedge funds: Grant Thornton and Eisner. There are outside specialists: Duff & Phelps. And even Ernst & Young where the JOLs work, corroborated the values of Fletcher. And Louisiana Pension Funds issued a press release announcing the corroboration of the value.

But in addition to the theoretical analysis, I believe we should view what has happened to the stock price since the announcement after the close on March 5th. Stock has been up all nine days in a row since then which if it were a coin flip, would be a 1 in 512 event but last week the Dow Jones Industrial Average was down every day for the first time in two years and UCBI stock was up every day. Stock is up fifteen percent since that announcement which led to an increase in market cap of UCBI by 137 million dollars.

Mr. Luskin also refers --

THE COURT: Market cap of UCBI or market cap of the two issues of preferred stock that are the subject of the warrants?

MR. TURNER: The market cap of UCBI but the value of the warrant would be up on the order of seventeen or eighteen million dollars over that time period, the warrant pay that is held by FILB.

Mr. Luskin, in his response -- in his recent response refers to my "rank speculation about market movements." This was Fletcher's business. It's been my business for thirty years and I don't consider it to be rank speculation.

I also made this call in my objection that I filed a week -- this past Wednesday saying that the stock was up four days in a row and because it was due at 4 o'clock and I had to deliver it, almost five days in a row but I didn't have the luxury of seeing the market close that Wednesday and yet it continued to go up again on Thursday, on Friday, on Monday, on Tuesday.

It -- to address the speculation comment further, we don't need speculation so much. The stock -- UCBI, at least as of last night's close was at $19.40 versus a four-and-a-quarter strike price that's 15 dollars in the money on seven million warrants. That's a 105; I think the precise number is closer to 107 or 108 million dollars.

And the market cap of United itself has gone up by 137 million dollars and that 137 million dollars is more than just taking those warrants back for nothing. It's sort of like a stock buyback except this stock was bought back far below market for twelve million dollars and the value to the remaining United shareholders increased appreciably; as I said, by 137 million dollars.

Now, that's -- I have to make an adjustment in the

argument that I filed last week because now the increase in market cap is worth more than the value of the options -- of the warrant that FILB still holds. Some of it could be related to the registration failure or not, but what I really believe is that if this warrant gets settled for twelve million dollars, I believe what you were referring to is the other classes of warrants that were given to FIA Leveraged Fund, eventually to the Louisiana Funds and then sold by the Louisiana Funds and the Ernst & Young JOLs back to the company for two-and-a-half million dollars.

Once this settlement goes through, if it goes through, I don't see how there can be a review of that prior two-and-a-half million dollar settlement. What I was hoping for was to -- I am -- still remain a director of FIA Leveraged Fund, although the joint official liquidators control it and I've been told that all I can do is object to what they're doing and file on behalf of the company, FIA Leveraged Fund.

If I could prove the point here that these warrants are worth significantly more than twelve million dollars, and I think the Reis case is very on point here, it could potentially open the argument for trying to take over FIA Leveraged Fund again and I'm told that, removing a liquidator, I would have the option of undoing anything that a liquidator did.

I'm even willing to leave the litigator's two-and-a-half million dollar settlement in place because I had

previously, in various affidavits to the Cayman court, said I believe that FIA Leveraged delivered the 136 million dollars of value that was needed at that time. What the Louisiana Funds did and what the Ernst & Young liquidators did is not my concern. It's a shame that they sold something that's worth 136 million dollars for two-and-a-half million dollars. Quite frankly, it would be worth a lot more today.

But the matter before the Court today is what to do with this seven million share warrant and as Mr. Martin had referred to it, the seven million share warrant, not the eighteen million share warrant for a total of twenty-five million dollars. And I think the company would be happy if they could receive a settlement on the seven million share warrant at a much higher price if they did not have to worry about the eighteen million share warrant being reopened again. At least that is my view of what the market has said over these past nine days with the stock trading up in a row.

This money could be used to pay all creditors in full, like the accounting firms and law firms. And there would be sufficient money to go up and possibly pay the Soundview funds all of the money that they are seeking. Massachusetts, the MBTA Retirement Fund, Massachusetts Bay Transit Authority Retirement Fund, could be paid in the tens of millions of dollars. And it could be done simply without having the litigation risk as has been referred -- different litigation

risk by having FILB and the joint group of funds sue Citco and sue Skadden, sue Eisner, sue Grant Thornton and a bunch of others.

I would also like to address Mr. Luskin's comment about me. I have nothing against Mr. McMahon personally but I think the sale of that basket of UCBI assets for two-and-a-half million dollars was way too low, even if just measured against the proposed twelve million dollar settlement. And to have him on the proposed plan advisory board, I think would be wrong.

One small comment about Seaport Group, which I have no problem with, but as somebody with all these years of experience, I am aware of a firm called OTA. They've been around for thirty years and OTA was not made aware of the sale of the United warrant. I'm not sure who was made aware of the sale. But Stephan Skinner who heads the warrants desk there believes that his firm is one of the largest. It's been around for thirty years and was shocked to find out he had not heard about such a proposed sale. He even was willing to bid 2.8 million dollars for the warrant if it were stuck at a $21.25 share price and for only 1.4 million warrants. Basically, two dollars -- he offered two dollars a share which would be slightly above 2.8 million dollars.

Quantal, who I know the trustee and Mr. Luskin have disparaged along the way, values the warrant -- warrant at 3.7 million. So the downside is not going from twelve to zero but

twelve to three. Now, twelve to three, that would be a loss of nine million dollars and that would be a -- that would be a problem. But measured against a 137 million share gain for the non-FILB shareholders over these last nine days is, I think, a shame. The downside's only nine million dollars. The upside is a hundred million dollars.

And when it comes down to -- and there's always litigation risk. There's litigation risk in everything. But the only case that I've been told is on point -- I'm not a lawyer but I've heard this from Skadden in a legal opinion, Mr. Martin agreed with it, and for gosh sakes, even now the trustee and the Seaport Group in its analysis refers to the Reis case. And in that case, the law clearly supports the view taken by Fletcher and the people that worked at Fletcher years ago and what Mr. Davis wrote in his report. And yes, there is litigation risk, but the question is what is the minimal -- what is the lowest level of reasonableness? And to accept nine million dollars instead of over a hundred million dollars when case law -- the only case, supports the side of this warrant seems silly.

And also further, if the 12 million dollars were to be accepted, that would be 12 million less the -- what I believe would be a 500,000-dollar commission to the Seaport Group. It would cover fees generated by the FILB trustee. It would then in theory, if everything works with an adjusted plan, go up to

FII in order to pay Soundview Elite the four million dollars it's owed. Then we go further up to Arbitrage where the JOLs would take a chunk of fees and very little would go to the remaining shareholders in the Fletcher system.

Yes, I realize that this market-based response is not a slam dunk, but I do believe it could lead to a different -- should it go -- should it go to a full-fledged trial as in FILB v. UCBI but I think -- I think United itself, without having spoken to them, given the -- how the market has shown this 137 million dollar increase in value, would be willing to pay a much higher settlement and that could actually send money to the shareholders and Mr. Luskin arguing today may be -- may even be able to show that twelve million dollars can meet the lowest standard of reasonableness. But would it actually be worth that to the creditors and the shareholders of the various funds when he would have to be fighting against science and this analysis going forward against suing Citco, Grant Thornton, Eisner and all of the other big firms he wants.

I assume that they will be fighting vigorously as well. The only difference there is beyond having to show the lowest standard of reasonableness, they would have to fight against the preponderance of evidence which I do not believe is on their side. Thank you.

THE COURT: Thank you.

All right. Mr. Luskin, response?

MR. LUSKIN: Your Honor, I'm going to take a step back and put this in context. This is the latest in a line of asset sales or settlements that the trustee has been engaged with in cooperation with his constituencies and that includes the JOLs and the Caymans for Leveraged, Alpha and Arbitrage. As Your Honor knows, we've been here before for Court approval of settlements and asset sales. Some of those asset sales brought about by Seaport, the broker that Mr. Turner now criticizes.

Indeed, in addition to the UCBI settlement, we plan on announcing this afternoon or tomorrow morning another substantial settlement that we'll be bringing to the Court.

I think that Your Honor is familiar with the background of this transaction. The UCBI transaction was in April 2010, 103 million dollar investment in a distressed real estate portfolio that was sold by UCBI, a regional bank in Georgia. These were nonperforming loans and REO property owned by the bank. And the transaction's described at length in our report at pages 90 to 95; it was financed largely by FILB. I'll have more to say about this. Some of the Soundview and Richcourt money made its way through Arbitrage to also support the transaction and that's relevant to what I am going to ask for the proposed order.

The first FILB, years ago before the bankruptcy and certainly before Mr. Davis was appointed, attempted to exercise these warrants and UCBI refused to honor them. There was a

dispute right from the get-go over the impact of UCBI's reverse one-to-five split that was done in June 2011. Just to simplify it completely, the strike price in the warrant as written is $4.25. The question is what impact the reverse split, five-to-one split or one-to-five split had on that strike price. FILB and then the trustee have argued with UCBI that the strike price remains unchanged at four-and-a-quarter. That, in our view, is the clear language of the contract and has support, we believe, in the New York Court of Appeals Reis case that Mr. Turner mentioned. It's highlighted in our report.

The other side of that dispute is that UCBI says that's not what the agreement says. The agreement provides for the adjustment of prices and that while the section that the trustee relies on, the section in the agreement that we rely on, does not mention reverse splits, there's another part of the agreement through a definition of daily market price that does require, they say, the adjustment of the strike price and that would bring the strike price to $21.25.

Obviously, this is a big deal. If the strike price is four-and-a-quarter, the warrant is in the money and Mr. Turner's valuations, while still fanciful, are substantially less fanciful. If the strike price is $21.25 even at $19.40, the warrants are out of the money.

Indeed, the stock price would have to go to approximately twenty-nine dollars for FILB to realize twelve

million dollars on the warrants; the twelve million dollars being the settlement amount that we have today.

That's not the only dispute. There are other disputes between the parties. I'm not going to go into them in any great detail. One of them that is mentioned in the papers is some --

THE COURT: For the parties, you meant the trustee and United Community Bank?

MR. LUSKIN: -- yes -- and was also mentioned by Mr. Turner in his reply, one of the other disputes is something called a registration failure. That had its origin in a period of time when UCBI had to restate its financial statements. During that period, we say they could not register the shares that we were entitled to buy. This is under a separate warrant, under the warrants that went to the JOLs and there was litigation over. That's a so-called registration failure under the stock purchase agreement. We calculate the damages at, say call it nine or ten million dollars. That's the number we use in our report. There's an argument it could be even more. There's an argument it could be substantially less and there's a very good argument that it could be zero.

There is substantial case law which UCBI was diligent in pointing out to us that says that this kind of penalty or this kind of liquidated damages clause is an unenforceable penalty especially in circumstances where even if FILB had

wanted to exercise this warrant, because actually this was a stock purchase right, a right to purchase preferred shares and then convert them, FILB would have had to come up with sixty-five million dollars and at no time has FILB ever had sixty-five million dollars to invest in this. It's -- so there is a very good argument or at least certainly a fair ground for dispute over whether or not this registration failure claim is worth 600,000 dollars, 9 million dollars, zero or some other number. I didn't want to spend that much time on the registration failure but there you have it.

There were also disputes over other provisions of the contract involving confidentiality, assignment of the warrants and so on and there was also a bankruptcy-related dispute over the use of so-called carry accounts. This was the stock and cash that FILB had pledged as part of the purchase transaction that was pledged to support the -- servicing real estate and servicing the interest payments on the seller's note.

And there was an argument to be made that UCBI violated the automatic stay by making use of the money in the carry accounts in accordance with the documents. That, too, is fair ground for litigation. Also fair ground for litigation would be the inevitable motion for relief from stay by UCBI for the right to have access to the carry accounts and FILB's undeniable inability to provide adequate protection to maintain the stay should UCBI be able to prove its interest. We did not

value that particular claim very highly.

In any event, we tried to exercise these warrants last summer. We were refused. UCBI dishonored. Negotiations followed, intensive negotiations over a course of several months. They were unsuccessful but the parties agreed rather than just cease irrevocably, we would just pause, which is what we did and the trustee took it upon himself to test the market. And that brings us to where we are.

The trustee engaged in an intensive marketing process. It's laid out in Mr. Davis' declaration. Mr. Davis personally oversaw this process, had daily contact with both the broker and contact -- and in some instances, multiple contacts with all of the bidders and their lawyers and made the ultimate decision based on his and his advisors', both financial advisors and legal advisors, as to which was the highest and best offer for the estate.

Now, in accordance with this Court's practice, we have put all this into Mr. Davis' declaration. I could make a detailed proffer but really, I think, there's no need. It's there in the record. Mr. Davis is here, available for any further questioning on it.

And that is, of course, in contrast to the presentation that we've heard from Mr. Turner. Much of what we heard today is new and not in any of his papers. It's certainly not in his objection. And then there is, of course,

the issue about opinion testimony which I'll come back to, that would account for the other half or more than half, given Your Honor's pointing to sixteen or so separate paragraphs that are replete with opinion.

I'll come back to the sale process. I just wanted to make sure that the Court was aware, not only of the Turner objection but the fact that as you would expect, we have been in fairly intensive discussions with the Soundview trustee, the BVI funds fiduciary, and their various professionals, over their view on the sale. And while they have no objection to the settlement with UCBI, they do have claims, which we of course dispute, but they have claims to some of the proceeds, perhaps all of the proceeds under a proprietary claim or constructive trust theory. I believe you heard some about that at the Soundview status conference last week.

In order to avoid having to adjudicate these issues now or frankly at next week's confirmation, we've entered into an agreement with those parties, the Soundview and BVI fiduciaries, under which assuming that the settlement is approved, we would essentially freeze four million dollars of the sale proceeds for a time period of forty-five days, and we've put in place a notice and objection period to deal with either litigating or otherwise resolving that claim. And again, if our settlement with UCBI is approved, we have specific language which we would include in the order and

that's language that's been cleared with Soundview and BVI.

So that brings us to the one objection we did receive, and I think as Your Honor has pointed out, there are several -- it raises several issues. One of the glaring ones, of course, is the fact that it is replete with opinion. There's no foundation for this opinion in the papers, as would be required under the Rules. And frankly, even what we heard today does not constitute foundation. I can certainly tell you that --

THE COURT: Well, the real problem, Mr. Luskin, is not lack of foundation because experts, if he were an expert and if he had complied with the expert requirements, would be allowed to form his views based on hearsay and anything else that he'd gathered up in his life. The real problem is that he didn't comply with Rule 26. He hasn't been found to be an expert and that --

MR. LUSKIN: Well --

THE COURT: -- the foundations for -- not foundations, that's the wrong word -- the prerequisites for expert testimony have not been complied with as set forth in Rule 26 of the Federal Rules and as are contemplated by Rule 702 of the Federal Rules of Evidence.

MR. LUSKIN: I did use the wrong word. I was using foundation with -- in a more colloquial sense. You're correct. He hasn't given us qualifications. He hasn't given us a report. He hasn't explained the bases for the opinion in any

comprehensible way.

There are those opinions and it's not just about valuation. It's also the reading the tea leaves about where the market is going and why it's made its movements and what it's going to do in the future. I mean cutting through all that, I'm not sure we need to evaluate Mr. Turner's qualifications and the foundations for his various opinions.

It's clear from his objection and it's clear from his presentation that all of his numbers presuppose a $4.25 strike price which doesn't exist right now. It's a disputed strike price. And if you were to rerun all of the analysis using the strike price that UCBI would agree with and would actually honor, it's $21.25, we have out of the money warrants that have some intrinsic value perhaps but not 127 or however many millions and tens of millions of dollars Mr. Turner believes they're worth.

So I think that on that basis alone, the numbers are just fanciful. There's a fundamental flaw there that drives through it, just -- the entire objection. We heard some today about finally an acknowledgement of litigation risk. I mean there's another area where Mr. Turner has no competence as an expert to opine on and that is handicapping complicated litigation. He is a layman. He cannot deliver any opinion on that under 701 and he's certainly not an expert under 702. He has not retained counsel. He doesn't have the benefit of

counsel. I mean, he's acting pro se and we all recognize that but this is an area that requires expert litigation handicapping an analysis which we have done and he has not.

And certainly litigation risk is one thing that we assessed, the trustee assessed at great length and has laid out in his declaration; all of the bidders assessed at great length. They all hired outside counsel, brand name law firms, the usual suspects. They submitted questions including written questions to Seaport and the trustee, questions about the warrants and the litigation claims and defenses.

Mr. Davis spoke with the bidders and their lawyers. I spoke with the lawyers. There's no question that litigation risk was first and foremost in these bidders' minds and again, Mr. Davis' testimony on this is not hearsay. It's not the -- it's not an issue whether or not the bidders' law firms were right or wrong. All that's appropriate for the Court to know is that every single bidder was considering the issue. And on that matter of notice, the record is complete.

So the trustee assessed the risk and the market assessed the risk. I think as you've seen, Seaport, the trustee solicited I think it was 109 separate funds; most of them were hedge funds. There were some others. The one that Mr. Turner today mentions for the first time, frankly, I don't know whether it's on the list. I can check that but assuming it's not on the list, it's according to its public SEC filing,

form ADV, the advisory form that investment advisors have to file, it's got something like fifty-six million dollars under management -- directly under management, consists of five people. It advises some hedge funds. Hasn't appeared, as far as we can tell. Has never litigated any issues like the -- at all, let alone the complicated, expensive and time-consuming issues that we're involved in. It's a firm that's had fifteen SEC violations over the past few years and has paid hundreds of thousands of dollars in --

THE COURT: All right.

MR. LUSKIN: -- penalties.

THE COURT: I'm going to interrupt you.

MR. LUSKIN: Okay. I --

THE COURT: His reliance on what they said and especially thought is hearsay and it sounds to me like you're asking me to assume hearsay now. And both sides are testifying on stuff that goes beyond Mr. Turner's response and the two briefs that you put in.

MR. LUSKIN: I think it's completely irrelevant what he's done. If he had the -- if he knew of buyers, he could have submitted them or put them in touch with Seaport. I agree. I'm not going to try to introduce what I think I could introduce which is a government filing which does come in as nonhearsay but I'm not going to.

THE COURT: Well, but you haven't introduced the

filing. You're purporting to paraphrase what the filing said.

And I'm just going to tell both sides, I've got a ton of material in the record. This is the wrong time to be putting in new stuff into the record.

MR. LUSKIN: Your Honor, I'm not putting any more on it in. I'm going to move to the -- what is it that we did. I will point out which is in the record and is obvious today, that Turner had no personal involvement in any of these negotiations, so I would certainly reject any of his testimony or presentation on characterizing these as both incompetent and irrelevant.

His big point about -- which is speculation -- that the increase in market cap was due to the announcement of the settlement, even if it were true, certainly doesn't make the link that somehow the trustee is entitled to the benefit of that market cap.

I can tell you that my negotiations started out with UCBI, as you would expect, they started out at a much higher number than twelve million dollars, and from their part, they started out at a much lower number than twelve million dollars. So we made our best effort to capture all value and they made their best effort to hold it to themselves.

What we have is the end result of an arm's-length negotiation. And certainly as a fiduciary, there is no reason for this trustee to stay in the market, to play the market, and

wait for stock to go up or to risk his own money and resources -- and when I say his, I mean his constituents, the investors -- money and resources on litigation that would clearly take years and cost tens if not -- well, it would cost hundreds of thousands of dollars, if not millions of dollars.

As I had mentioned before, the stock price would have to go above twenty-nine for us to realize twelve million dollars today. We received one other cash bid that was not firm, the eight million dollar cash bid; UCBI's was really far and away the highest and best cash bid. The next bid was a hybrid bid; it included both cash of six-and-a-quarter million and a piece of the litigation.

For us to recover twelve million dollars on the second highest bid, that bidder, the purchaser would have had to win over thirty million dollars from UCBI. So yes, we did a lot of handicapping. We did a lot of risk assessment and determined that the end result was that the cash bid from UCBI was the highest and best.

I've already spoken about the registration failure. That was in the bid package. That is a claim that would have been sold to a third-party bidder. Obviously, it didn't garner much interest. And as I mentioned before, I think you can see the reasons why.

Just to -- let me just -- give me one second here.

You know, we heard a lot from Mr. Turner about

attacking a settlement that the Cayman Island JOLs went into with the other warrants. I mean, there's a procedure to do that and it's not by standing up here today on this motion. Mr. Turner is free to go do whatever it is he feels he needs to do in the Cayman courts.

The legal standard, as Your Honor adverted to, is whether or not the settlement falls above the lowest point in the range of reasonableness, and really, in addition, whether or not the trustee has exercised sound business judgment and selected a settlement or agreed to enter into a settlement that's in the best interest of the estates.

And I think that on that, there really can be no question. The record shows that these negotiations were arm's length. They were with very sophisticated parties. A very wide net was cast. Intensive negotiations were conducted with the handful that were actively interested. The trustee was personally involved and had the benefit of his advisors.

This settlement has the support of all of his major constituents. And as Your Honor has noted, there is only one substantive objection and it is not from a major constituent. I think at the end of the day, what Mr. Turner's objection comes down to is speculation. He's tried today to dress it up in his long experience trading options. I can just tell you that we submitted a 300-page report that shows that virtually every single one of Mr. Fletcher's and Mr. Turner's projections

was dead wrong and that's really why we're here.

Thank you.

THE COURT: All right. Thank you.

Mr. Turner, I've let both sides speak at very, very great length. I'll take very, very brief reply, if you have any.

MR. TURNER: Yes, I do, Your Honor.

Mr. Luskin's last comment here about the 300-page trustee report was already ruled on by this court saying that my objections and inserts could be included because that report is just hearsay and opinion and not to be taken as fact.

And another thing Mr. Luskin said is that it is true Turner had no involvement in negotiating this UCBI warrant, and I believe Mr. Fletcher had none either. However, there have been previous circumstances where Fletcher has sold a warrant back to a company, Edelman Financial, and we believe the price we received for that warrant is much higher than would have been received in the market. And I think makes the people at Fletcher Asset Management more qualified. It is not an attack on the trustee's ability, but my -- to negotiate, but my concern -- my concern here is that Mr. Luskin says that he's now accepting or resignedly accepting a $21.25 share strike price.

And to address his issue with the stock at 21 -- 19.40 and the strike price at 4.25, the Quantal value, or any value

that Fletcher would use, would only have 2 or 3 million dollars more in theoretical premium value and on top of the 107 million dollars intrinsic in-the-money value.

So we don't even have to discuss the value of the warrant. At this point in time, I would say fight the case and try to win at 4.25 and then sell the stock at 19.40 and you could collect 107 million. Who cares if it's 107 or 110?

I'm not -- I am not a legal expert, and I think that point has been made clear today. But I would like to refer to a legal expert, Judge Smith (ph.), who wrote the opinion on Reis and if I just may read his first two sentences.

"The issue here is whether warrants to purchase shares of stock of defendant corporation must be adjusted in light a reverse stock split authorized by defendant corporation after plaintiffs received warrants. We answer that question in the negative."

So the issue here -- and that's from the New York Court of Appeals and I believe the only case on point -- how does Mr. Luskin and the FILB trustee find that there is a ninety-one chance that that case can be reversed here and that ninety-one percent is basically just settling for twelve million dollars versus the three that they could probably get for the warrant with the 21 dollar strike price versus the upside of 107 million dollars. When case law is on point it just seems beyond the low -- the low range of reasonableness to

me.

THE COURT: All right. Thank you.

MR. TURNER: Thank you.

THE COURT: Mr. Luskin, do you need to surreply?

MR. LUSKIN: I do not.

THE COURT: All right.

MR. TURNER: One more -- one more --

THE COURT: No, it's time to bring this to an end. I haven't looked at my watch but the argument on this motion has been interminable.

Ladies and gentlemen, I'm approving the settlement and the sale that has been proposed by the trustee, and my findings of fact, conclusions of law and bases for the exercise of my discretion follow.

As facts, I find that in April 2010 United Community Bank, our debtor FILB, and certain related FILB parties entered into a two-part transaction pursuant to which -- excuse me --United Community Bank sold certain nonperforming loans and bank-owned properties to a debtor affiliate, Fletcher International, Inc., and FILB received warrants to buy two classes of preferred stock of United Community Bank.

Additional terms of that deal included provisions that if FILB did purchase the full amount of preferred stock it would receive an additional cashless -- that is without cash -- exercise warrant for 35 million dollars at an exercise price of

$6.02 per share, which we refer to as the additional warrants, but FILB's performance under the deal was excused if there was a so-called registration failure, which is a matter of dispute between the parties.

There's no need, for the purpose of this analysis, to get into the weeds on the details of these because I'm not going to be deciding the underlying dispute except to identify the issues that separate FILB on the one hand and United Community Banks on the other.

It is necessary or appropriate to note, however, that FILB didn't fulfill all of its purchase obligations under that agreement, paid a fee -- fairly major fee, 3.25 million bucks -- and that United Community Bank makes further claims on that, although, not very large in the context of the remainder of this transaction that FILB was late with its payment and therefore, owes United Community Bank an additional 34,000 bucks in interest.

In April 2012, FILB exercised or tried to exercise a million bucks worth of the warrants, but United Community Bank refused to honor the warrant exercise. United Community Bank contended among other things that the strike price and the warrant formula had been adjusted to account for the reverse stock split.

This issue of whether or not the strike price was or was not adjusted is a major area of controversy, one where I

don't make a finding except to note the arguments on each side and where I further note that Mr. Turner, the sole objector, has made some conclusory statements about his view of the way that litigation disputes should be resolved, but which I find, with respect, lacks the legal expertise for me to give it great weight, nor the depth which the trustee gave to the issue.

In August of 2013 -- that's about six or seven months ago -- the trustee tried to exercise the remainder of the warrants, but United Community Bank again refused, contending, among other things, that the original warrant price would have to be adjusted to account for the reverse stock split.

As my earlier comments indicated, there is a dispute, and I would say a very major dispute, between the trustee on behalf of the FILB estate on the one hand and United Community Bank on the other, as to whether a reverse stock split would or would not have an effect upon the strike price.

The outcome of that controversy is enormous because under one view, the warrants are out of the money, and in other they have some substantial value. There is, as I've said, a dispute on that which I find as a fact or as a mixed question of fact and law. It could go either way.

There are, in addition, other claims by United Community Bank, which in my view are not as significant as those as set forth in paragraph 16 of Trustee Davis' declaration.

If the reverse stock split did not adjust the strike price upward, the value of the warrants could be as high as seventy-one million dollars as estimated by the trustee and, if I understand Mr. Turner's contentions correctly, even higher than that. But if the trustee is incorrect and if the warrants couldn't be exercised until the stock price exceeded 21.25, the warrants would have little, if any, value.

To deal with these uncertainties and in an effort to monetize these assets, the trustee contacted the Seaport Group about marketing both the warrants themselves and the debtor's litigation rights associated with its dealings with United Community Bank.

Seaport contacted 109 potential bidders for the warrants. And I find as a fact that Seaport did a diligent job in that regard. It informed potential bidders that they had an option of making their bids for the assets in two types of structures: one, cash only, and second, what were called hybrid offers which would be combinations of cash and what I'll call colloquially as "a piece of the action", that is a percentage of future recoveries by the buyer on the warrants and the claims under the purchase agreements that were associated with their acquisition.

Of the 109 potential bidders, 9 arranged due diligence calls with the trustee, 7 offers for the warrants were received from 6 different bidders. United Community Bank was the

ultimate winner.

The bids consisted of three all-cash bids and four hybrids in the sense that I described them before.

I find as a fact that the trustee exercised appropriate business judgment to try to plow the fields to get the best offers; that Seaport did its job appropriately; and that the trustee took reasonable steps, not just exercised business judgment, but satisfied a higher level of scrutiny, that he did the right thing to try to maximize the value.

Ultimately, as I indicated, United Community Bank turned out to have made the best proposal and it made a deal subject to my approval for a payment to the estate of twelve million dollars consisting of at least two million in cash and the remainder in stock, along with the releases that one would associate with a transaction of this character.

Whenever you're looking at litigation, you have to look at the alternatives. If that settlement hadn't been reached, the trustee would have then had to either accept the best hybrid offer or to commence litigation against United Community Bank to resolve the claims that I addressed, plus certain others that I didn't, although they're of lesser importance.

Litigation with United Community Bank would likely take a year longer and would cost many hundreds of thousands of dollars in legal fees, although in my experience with the

matter that's on the calendar next, which we'll hopefully eventually get to, leads me to believe that litigation in this court is much more expensive than that and can easily run into the millions.

I'm satisfied that the value of the warrants has been satisfactorily tested in the market. Testing the outcome of the litigation is more difficult, but I think that any responsible trustee could -- would have as the trustee did here, also evaluated the risk that, after spending these very sizable terms to litigate the estate, could have been effectively a total loser.

The standards -- and now turning to my conclusions of law and bases for the exercise of my discretion, the standards for approval of the settlement are articulated in the Supreme Court's decision in TMT Trailer Ferry; several rulings by the Second Circuit Court of Appeals that hold, in substance, that settlements should be viewed with favor and not disapproved unless they fall below the lower range of reasonableness; and many decisions I personally issued, most significantly in the Adelphia Communications Corporation case. The cases and I'm bundling them because I've spoken at great length already and I still have a full courtroom, require a court like me to look at the likelihood of success in the litigation compared to the present and future benefits offered by the settlement, the prospect of protracted litigation if the settlement isn't

approved, as well as the related expense and convenience in delay, and the degree to which the creditors support the settlement, the nature and extent of the releases to be obtained by officers and directors, and whether the settlement was a result of arm's-length bargaining.

Here I find as, and have found as either facts or mixed questions of fact and law, that the litigation could go either way. And while the trustee would certainly have points that he could make, and I certainly find that the trustee has competent litigation counsel would carry the sword for him if he did, that there is much less than a reasonable assurance that the trustee would prevail in the litigation and that the downside risk would have very draconian consequences upon the stakeholders of the estate.

The prospect of protracted litigation of this settlement is not approved is plain to me. And while I can't quantify the expense of the litigation, I do find -- and this is something that I take into the equation as a matter of my discretion based on fourteen years of doing this job -- that litigation in this case can -- in this court continues to boggle my mind with how expensive it is.

And one cannot appropriately analyze a settlement without looking at the litigation outcome, the downside risk, and most significantly the expense of litigation. Maybe I should rephrase that. I guess most significantly is the

downside risk, but you can't ignore the cost of the litigation.

I've already talked about the alternatives. Now, let me just talk briefly about one or two other things. I do not believe that whether creditors or any subset of the creditor community approved the settlement is the be all and end all. There are times when an estate fiduciary has to make hard choices that may not be approved by every creditor or every creditor constituency.

Here, however, I do note that the parties whose money is most on the line, the stakeholders of this estate with the exception of Mr. Turner, who obviously has some personal skin in the game from a reputational and other point of view, unanimously support this settlement.

If they shared Mr. Turner's views -- and they're big boys; they have the expertise to form views as to a matter of this character -- it strikes me as extraordinarily unlikely that they would have given the trustee the support that the trustee obtain vis-a-vis this settlement.

Now turning to Mr. Turner's points, first, I take Mr. Turner's points as argument and I take them as setting forth facts as to which he had personal knowledge, matters as to which he can express a lay view under the Second Circuit's decision in Bank of China and my decision in Perry Koplik and under Rule 701 of the Federal Rules of Evidence. But I cannot take his opinions as anything other than an advocate's

argument.

That's because Rule 702 of the Federal Rules of Evidence places limitations on the consideration of expert testimony, except in those cases where we've gone by the rules. And those rules include, among other things, establishing the qualifications of the person proposed to provide expert testimony and importantly providing an expert report in the disclosures that are a sine qua non to the consideration of expert testimony.

Now, Mr. Turner spoke of his qualifications, which I think are indeed substantial. And I don't rule out the possibility that if he had satisfactorily been qualified as an expert, his opinions might have been admissible or could be admissible in another matter. But before they can be considered on this matter, they must comply with the rules for introduction and admission of testimony under Rule 702.

More fundamentally, even if I had considered his views as satisfactory opinions, opinions can only deal with facts as they are now known and cannot involve in any material way predictions of the market movements that might take place in the future, which can go up and can go down.

And while I would not fully analogize the trustee's efforts to make an intelligent guess as to when it's time to cash out of a position, nobody would suggest that any trustee simply gamble on market movements, or putting it perhaps in a

better way, when a trustee elects not to gamble on market movements, he or she is at least in most, if not all cases, acting entirely reasonably.

I also need to emphasize the very limited extent, none in his papers, and without much more in oral argument, Mr. Turner failed to address the TMT Trailer factors, especially litigation expense, arbitraging the outcome of litigation that would need to take place, and factors other than his economic view of the value of these warrants if indeed there were no litigation risks.

So for all of these reasons I'm approving this settlement.

And Mr. Luskin, you are to settle an order in accordance with this ruling stating in substance that for the reasons stated on the record, the motion is approved. The time to appeal this ruling will run from the date of entry of the associated order and not from the date of this opinion.

Also for the avoidance of doubt, I have considered and have rejected the wisdom of imposing a stay upon my order. And the requirement in the 8000 series of the Federal Rules for seeking a stay initially from the bankruptcy court shall be deemed to have been satisfied and waived. If any stay is sought, it must be sought and obtained from the district court and not from me.

Next matter, Mr. Luskin?

MR. LUSKIN: Okay. Your Honor, if I can thirty seconds on the order because I did promise the fiduciaries of the BVI funds and Soundview that I would be a little bit more precise than I have been. I'm not going to read the text of the order, but I do want the Court to be aware that we have agreed that the trustee will not distribute four million of the proceeds, which by the way, will be all cash proceeds, without forty-five days written notice to the appropriate parties, including the trustee and the BVI fiduciary and their counsel; that apart from that, the trustee is free to use the balance of the settlement plan as provided in a confirmed plan, which of course we do not yet have; and that if we were to give notice of distribution of these funds, there's a forty-five day objection period for the parties to work things out. And during that period we wouldn't distribute the restricted monies.

And of course, nothing in the order that we will be submitting on this settlement motion will prejudice the rights of any party, including Soundview and the BVI funds to assert other claims they have anywhere they have them, or to object to the proposed FILB plan.

We will -- and we have language that has already been cleared by the parties-in-interest. I will submit an order this afternoon. I will send copies to everyone who's participated and it will be type of language you've adverted

to.

Thank you.

THE COURT: All right. Does anybody from the Soundview estate, or for that matter who is otherwise affected by the language that Mr. Luskin described, feel that his presentation as to the deal points was inaccurate or incomplete?

Mr. Pearson?

MR. PEARSON: Sorry.

THE COURT: Is it Mr. Pearson?

MR. PEARSON: Yes, it is, Your Honor. Mr. Pearson for the Soundview estate.

No, we feel that was a fair presentation and the order has been agreed with us in advance, and so we are comfortable with that language.

THE COURT: Okay. Fair enough.

What else you got, Mr. Luskin?

MR. LUSKIN: The pleasure of handing the rest over to Mr. Hornung. You've heard enough of with me.

THE COURT: All right. Fair enough.

MR. LUSKIN: Thank you.

THE COURT: Mr. Hornung?

MR. HORNUNG: Good morning, Your Honor. We have a number of different matters. I'll sort of group them into two categories. The first have to do with twenty-six claims that

were filed against the debtor's estate. There's a number of objections, as well as a stipulation resolving one of those objections and a stipulation allowing the claim temporarily just for voting purposes.

What I'd like to do is go through the objections first because we've not received any response to the parties' claims that we've objected to. And then what I'd like to do is move on to the two stipulations to which we have received a response from Mr. Turner. And then the last thing that is on my agenda is a status conference in the adversary proceeding, and that's related to Mr. Davis' lawsuit against Fletcher International, Inc.

THE COURT: Okay. Now, on the claims objections, it's my practice that for people who don't respond to estates when they file objections, I grant them for the nonresponders and expect anybody who had, like, called up the estate or filed a written objection to kick that matter to a time at which the merits of the objection can more appropriately be heard.

I'm not aware of there being any in the second category, so your claims part is solely with respect to people who didn't object at all?

MR. HORNUNG: That's correct, Your Honor.

THE COURT: All right. The estate's objections to that are sustained. You can move on to your next matter.

MR. HORNUNG: Okay. The next matter is -- relates to

a proof of claim that was filed by Jeffrey Colon who is a tax advisor of the debtor. He filed a proof of claim in the amount of twenty-six million -- excuse me -- 26,000 dollars. And the trustee objected to that claim solely for the reason that Mr. Colon had not attached any supporting documentation. He believed that the documents were protected by the attorney-client privilege.

After the objection was filed, Mr. Colon contacted the trustee's counsel, provided the necessary documents. We reviewed the debtor's books and records, realized that there was potentially some 4,000 dollars that had been received by Mr. Colon during the preference period, had a telephone conversation with Mr. Colon discussed resolving both the objection and the claim.

And the culmination of that conversation was the stipulation that's currently before the Court, which amounts to allow the claim in the amount of 12,000 dollars. It resolves the objection filed by the trustee. It also avoids the trustee having to prosecute preference action. The objection that we received as from Mr. Turner, and Mr. Turner has suggested that the trustee has resolved this claim for an improper purpose.

It appears that Mr. Turner believes that the trustee solely resolved this claim so that he could collect "yes" votes and outlaw "no" votes to the trustee's plan. I'd like to point out that because of the unique nature of the debtor's estate,

Class 3 general unsecured creditors that were not objected to -- there were only eight creditors who were entitled to vote. We received ballots from three of those creditors. The other five have not responded. So it's a very small creditor class.

Obviously the trustee exercised his reasonable business judgment in agreeing to resolve this claim and we believe that it's in the best interest that the estate -- that the Court approves stipulation.

THE COURT: All right. Mr. Turner, you're contending that the trustee's trying to stuff the ballot box?

MR. TURNER: Without having had any knowledge, I'm not sure whether -- whether or not there was. As I've said, I am not an attorney, but the -- there are approximately forty claims in Class 3. Apparently eight were approved by the trustee and the balance are objected to, including those of the Soundview and the Richcourt funds, among others.

Apparently, from reading Mr. Luskin's response the other day, only three people have voted to approve: one, which was Prescott, which I have no objection to; two, the Messer -- I would have preferred had that case been heard first. I don't understand why Messer gets his vote, it is deemed entitled to vote while pretty much everyone else is objected to while the trustee claims that there's no merit to his case. I believe I'm in accord with the trustee that there is no merit to the

Messer case as the -- any agreement between Fletcher and Madison Williams was at the parent levels up above. It was an agreement between FILB's parent and the parent of Mr. Messer's entity without any promise to send any money down to Mr. Messer's subsidiary, but I have no objection against Mr. Colon receiving his money.

I'm just surprised that without Messer and Colon -- if I'm understanding this correctly -- that it could have been a one to nothing vote to approve the Class 3 series of forty something things.

Thank you.

THE COURT: All right. Mr. Hornung, do you wish to reply?

MR. HORNUNG: Your Honor, yes. And what I had intended to do was to next address the stipulation that he referred to as the Messer stipulation. This is Greg Messer as the Chapter 7 trustee for Madison Williams and Company. So I'll respond to that now.

Simply put, we contacted Mr. Messer's counsel to discuss his claim because we weren't sure if there was any merit to it. We wanted to evaluate it and we were considering objecting to it. During the course of that conversation, the parties agreed that we didn't have to resolve that issue right now, that we could allow the claim only for voting purposes and down the road we would either object and litigate that claim as

was necessary.

And again, we think this is a provident use of the trustee's resources not to engage in unnecessary litigation. And hopefully we can come to a resolution with Mr. Messer and not be required to either object or file some sort of an adversary proceeding.

THE COURT: All right. Mr. Turner, do you have a need to reply?

MR. TURNER: No, Your Honor.

THE COURT: All right. I'm overruling the objection and I'm approving this. The debtor is in position of the world. And the trustees of the world have duties to deal with issues of this character, both to address the legitimate desires of creditors to vote on plans under circumstances where their claims have not yet been fully allowed and also to engage in dialogue with the creditor community to reduce and allow, or otherwise address issues such as preference recoveries without bankrupting the estate further in the nature of litigation over these things.

In the absence of any real facts -- plausible allegations and real facts that cause a judge to believe that a trustee or debtor-in-position is indeed trying to stuff the ballot box, because that in substance is the allegation, a court has no right or responsibility or duty to deny the creditors of the world the usual rights they have to address

their legitimate needs and concerns. And certainly, I have no basis for finding either plausible allegations of trustee misconduct or facts supporting such a view here.

So, Mr. Hornung, the objection is overruled; settle an order. And you can permit the voting as contemplated.

MR. HORNUNG: Thank you, Your Honor.

And the last matter that we have today is the status conference for the adversary complaint against Fletcher International, Inc.

If Your Honor will recall, at our last status conference -- I believe was on February 20th -- no one appeared on behalf of Fletcher International, Inc. and you directed me to contact Mr. Fletcher, in essence let him that he needed to appear, retain counsel, seek a request for an extension from me or from the Court, and if he did not do so, you would be inclined grant a default judgment in our favor.

I did as directed, let Mr. Fletcher know. I had radio silence until I was walking into the court this morning. I did receive a letter. I do not believe that it was copied to the court. In essence, the letter amounted to a general denial of the allegations in the complaint and also let us know that Mr. Fletcher intended to assert counterclaims for malicious prosecution amongst other things against presumably Mr. Davis.

This sort of was --

THE COURT: Mr. Davis, the Chapter 11 trustee --

MR. HORNUNG: That's correct.

THE COURT: -- of FILB?

MR. HORNUNG: The threshold matter as we dealt with earlier today is that Fletcher International, Inc. is, of course, a corporation. Mr. Fletcher is not an attorney and is not entitled to appear on behalf of Fletcher International, Inc. pro se.

At this point, his answer was originally due back in the beginning of February. His refusal to respond until today is certainly slowing down the trustee's efforts to move forward with this. And we would like to move forward and sort of see what the Court would like to do, but we do not believe this one sentence response to us is appropriate and we'd like to move forward with the default unless Mr. Fletcher is going to have counsel in a very short time period.

THE COURT: All right. Mr. Fletcher, we've talked before, some in your presence and I don't rule out the possibility that it was also mentioned in your absence, that Fletcher International, Inc., like other corporations, cannot appear in a federal court without counsel.

There are also rules imposed by the Federal Rules of Bankruptcy Procedure that start with Rule 7000, and I think the one that would be relevant here would be somewhere in the range from 7008 through 7012, and the Federal Rules of Civil Procedure, running roughly from Rule 8 through Rule 12, that

require real responses to pleadings.

I know you're pro se, but you've got to tell me what's your game plan for getting counsel. And if you have no plan for getting counsel, then what I think I'm going to need to do, to give due process to both sides, is to give you a certain date to get things straightened out, failing which, I'm going to authorize Mr. Hornung to make a motion for a default to which you or somebody can respond. And I will authorize and direct both sides to address whether the failure to defend by counsel is something that I can insist on or is merely a suggestion.

So let me get your response now, Mr. Fletcher.

MR. FLETCHER: Thank you, Your Honor. The response that I sent to Mr. Hornung was certainly more than one sentence, but very certainly much less than a formal response that an attorney would provide. The attorney who has stepped in in the New York Supreme Court litigation with Kasowitz has expressed a willingness to step in here.

THE COURT: Did you say has or has not?

MR. FLETCHER: He -- he has expressed an interest.

THE COURT: Has expressed an interest.

MR. FLETCHER: Yes.

THE COURT: All right.

MR. FLETCHER: Yes, indeed. And so it's a matter of getting that done, and I do think that will be possible.

The other thing I'd clarify is I wouldn't say that I have refused to respond. I would say that I've -- I've been responding a large number of things as best I can, and it is certainly not an intentional lack of response. But I do understand the point that counsel is needed for a corporation. I do have a particular counsel who's willing. I just have to get that deal done and -- and he is able to move quickly. So theoretically, he will be the one who files a formal response.

THE COURT: How much time do you need to get your lawyers on board and how much additional time do you need to get the answer done?

MR. FLETCHER: I think he can do the answer quickly because he's done a similar answer to the state -- I'm sorry; I'm mixing my matters here. I don't think it'll take him long to do an answer. He's familiar with these issues. The bigger question is my getting my deal done with him, giving him certainty. He'd like to have the security of an appropriate retainer. I -- hence, noting to this deadline in particular, I was hoping to have it done by today and I think it's not out of the question for him to be in place by next week, but I -- I don't -- I can't say that with certainty.

THE COURT: All right. Here's what we're going to do, gentlemen. I'm providing for triple that time, three weeks, to get a notice of appearance or otherwise confirmation that Fletcher International, Inc. has a lawyer.

I'm further providing that Fletcher International, Inc. will have three weeks plus thirty days from today to file an answer. That time can be extended for cause upon an application by a real lawyer if thirty days is insufficient to do it, but this train has got to leave this station. And that's what we're going to do.

MR. FLETCHER: Thank you, Your Honor.

THE COURT: Okay.

Anything else, Mr. Hornung?

MR. HORNUNG: Your Honor, I believe that that is it.

THE COURT: Okay. Very good. All right. Then we're done with Fletcher International Limited of Bermuda.

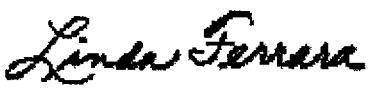
(Whereupon these proceedings were recessed at 11:49 AM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Linda Ferrara, certify that the foregoing transcript is a true and accurate record of the proceedings.



LINDA FERRARA (CET**D-656)

AAERT Electronic Certified Transcriber

eScribers, LLC

700 West 192nd Street, Suite #607

New York, NY 10040

Date: March 20, 2014

F

Q

R

S